IN THE UNITED STATES BANKRUPTCY COURT

FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

IN RE:	**§**	
	§	
QUALITY ACCEPTANCE CORPORATION,	**§**	**CASE NO. 99-31769-BJH-7**
	§	
Debtor.	**§**	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Findings of Fact

1. This Court has jurisdiction over this proposed settlement pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding. 28 U.S.C. § 157(b).

2. The Chapter 7 Trustee (the "Trustee") of Quality Acceptance Corporation ("QAC") seeks court approval pursuant to Bankruptcy Rule 9019(a) of a settlement he negotiated with those parties identified in the proposed Settlement Agreement (the "Proposed Agreement") as the Combined Parties.

3. This case is essentially a two-party dispute. Alan G. Hardin, Jr. ("Hardin"), Nolan L. Strahan ("Strahan") and Ronald Flora ("Flora") (collectively, the "Hardin Group") are all holders of debentures issued by QAC. The Hardin Group holds 100% of the priority debentures issued by QAC in 1997. The Hardin Group holds approximately 75% of the total outstanding indebtedness of QAC. The Hardin Group acquired the priority debentures in two transactions. Under the first tender offer made to all holders of subordinated debentures, the Hardin Group acquired approximately 75% of the outstanding subordinated debentures. The only debenture holders who did not accept this initial offer were the members of the Marino Group which include Joe A. Marino, as Trustee for the Joe M. Marino Trust, JoAnne Todora Murphree,

J.J. Todora, Raymond Abel and Minnie L. Murphree (collectively, the "Marino Group"). The Marino Group holds approximately 25% of the outstanding subordinated debentures.

4. In 1997, QAC made an offer to all subordinated debenture holders, including the Marino Group, to exchange the subordinated debentures for priority debentures. The Hardin Group converted their debentures to priority debentures. The Marino Group declined the offer.

5. As a result of these two transactions, the Hardin Group holds all of the priority debentures equal to approximately 75% of the total outstanding debt of QAC. The Marino Group holds subordinated debentures equal to approximately 25% of the total outstanding debt of QAC.

6. The Hardin Group is comprised of insiders of QAC who were actively involved in managing (or, according to the Marino Group, mismanaging) QAC's affairs.

7. While the claims now asserted by the Hardin Group were originally held by non-insider creditors, the Hardin Group's views regarding the Proposed Agreement must be discounted because the Trustee proposes to settle all of the estate's claims against the Hardin Group and several affiliates including their new premium finance company, Combined Premium Finance, Inc.

8. The Marino Group vigorously opposes the Proposed Agreement. In fact, the Marino Group is prepared to fund the Trustee's pursuit of the claims that otherwise would be settled pursuant to the Proposed Agreement.

9. The Trustee negotiated the Proposed Agreement in good faith and the settlement set forth therein was reached as a result of arms-length bargaining between the Trustee on the one hand and the Combined Parties on the other hand.

10. If appropriate, these Findings of Fact shall be considered Conclusions of Law.

Conclusions of Law

11. This Court is bound to apply Fifth Circuit precedent regarding approval of settlements under Bankruptcy Rule 9019(a). Thus, the Proposed Agreement should be approved if it is fair and equitable and in the best interest of the estate. *Rivercity v. Herpel (In re Jackson Brewing Co.)*, 624 F.2d 599, 602 (5th Cir. 1980). The Court must compare the terms of the compromise with the likely rewards of litigation. *Id*. at 607.

12. When considering approval of a settlement, courts have applied various factors to ensure that the settlement is fair, equitable, and in the interest of the estate and creditors. The Fifth Circuit has previously held that this Court must consider:

> (1) the probability of success in the litigation, with due consideration for the uncertainty in fact and law,
>
> (2) the complexity and likely duration of the litigation and any attendant expense, inconvenience and delay, and
>
> (3) all other factors bearing on the wisdom of the compromise.

In re Jackson Brewing, 624 F.2d at 609.

13. In *Connecticut Gen. Life Ins. Co. v. United Cos. Fin. Corp. (In re Foster Mortgage Corp.)*, 68 F.3d 914 (5th Cir. 1995), the Fifth Circuit elaborated on the "other factors bearing on the wisdom of the compromise," and concluded that one such factor would be "the paramount interest of creditors with proper deference to their reasonable views." *Id*. at 917. The Fifth Circuit also concluded that another factor bearing on the wisdom of the compromise would be the "extent to which the settlement is truly the product of arms-length bargaining, and not of fraud or collusion." *Id*. at 918.

14. While the desires of the creditors are not binding, this Court "should carefully consider the wishes of the majority of the creditors." *In re Foster Mortgage*, 68 F.3d at 917.

15. Because the views of the Hardin Group are tainted by their self-interest in seeing the Proposed Agreement approved, the creditors whose wishes must be taken into careful consideration are the only remaining creditors, the Marino Group. The Marino Group vigorously opposes approval of the Proposed Agreement and represents that it is prepared to fund the Trustee's pursuit of the claims that would otherwise be settled by the Proposed Agreement.

16. Conditioned upon the Marino Group depositing $70,000 with the Trustee to be used by the Trustee to prosecute the estate's claims against the Combined Parties within ten (10) days of the entry of these Findings of Fact and Conclusions of Law, the Proposed Agreement will not be approved for two reasons. First, the Marino Group vigorously opposes the settlement and believes it not to be in their best interest as the only outside creditors of QAC. Moreover, the Marino Group is prepared to fund the Trustee's pursuit of the estate's claims against the Combined Parties. Second, the Proposed Agreement does not end the litigation. A representative of the Marino Group testified that they will object to the Hardin Group's claims and will seek to subordinate those claims pursuant to § 510(c) of the Bankruptcy Code. Moreover, this representative testified that the Marino Group will pursue related individual claims against members of the Hardin Group in state court. Because the same facts will form the basis of all of these claims, it makes little sense to settle the estate's claims for less than the cost of defense of those claims,[1] only to hear those same facts in the context of a subordination action where no monetary recovery is possible.

---

[1]It appears that the preference claim asserted by the Trustee against members of the Hardin Group is very strong. The Trustee asserts that members of the Hardin Group received a $60,000 preference and the Combined Parties are paying $60,000 to settle that claim. All other estate claims being settled pursuant to the Proposed Agreement are being settled for approximately $37,000. The Trustee testified that it would cost the estate $50,000 - $70,000 to litigate these claims. Thus, it appears that the Combined Parties are settling these claims for well less than the cost they would incur in defending against the Trustee's claims.

17. If the Marino Group is not prepared to live up to their courtroom offer to fund the Trustee's pursuit of these claims through litigation, then the Court will discount their statements about their belief as to the value of the claims and their desire to litigate the facts underlying the claims. If the Marino Group fails to timely deposit $70,000 with the Trustee as required by these Findings of Fact and Conclusions of Law, the Court will entertain a request by the Trustee to supplement these Findings of Fact and Conclusions of Law and to reconsider the Court's conditional denial of approval of the Proposed Agreement.

18. If appropriate, these Conclusions of Law shall be considered Findings of Fact.

Signed: June 16, 2000.

Barbara J. Houser
United States Bankruptcy Judge